

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

ZIAD BOUKAI
2 Caladium
Las Flores, CA 92688

Employer

Docket Nos. 01-R3D7-1363
through 1365¹

**DENIAL OF PETITION
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above-entitled matter by Ziad Boukai [Employer].

JURISDICTION

Commencing on October 11, 2000, a representative of the Division of Occupational Safety and Health (the Division) conducted an inspection and investigation at a place of employment maintained Employer at 30471 Avenida De Las Flores, Rancho Santa Margarita, California (the site). On February 1, 2001, the Division issued to Employer citations alleging violations of the occupational safety and health standards and orders found in Title 8, California Code of Regulations, which consisted of serious violations of sections 1644(a)(6)² [guarding open sides of scaffold platform] and 1644(a)(5)(A) [securing metal scaffolds] and general violations of sections 1509(a) [effective IIPP], 1509(b) [Code of Safe Practices], 1509(e) [safety meetings], 1637(h) [inspection of scaffold lumber], and 1644(a)(7) [platform requirements] with proposed civil penalties totaling \$5,490.

¹ In the Order Dismissing Appeal the docket number was incorrectly listed as 01-R3D7-1363 and 1365 rather than the correct docket number of 01-R3D7-1363 through 1365.

² Unless otherwise specified, all references are to sections of Title 8, California Code of Regulations.

Employer filed timely appeals contending that the proposed civil penalties were unreasonable, and that Employer was improperly cited because another employer (subcontractor) who should have been cited denied working at the site.

On November 16, 2001, a Notice of Hearing was issued by the Board notifying the parties that the hearing of Employer's appeals was set for February 7, 2002, at 9:00 a.m., in Anaheim, California.

On February 7, 2002, at the time set for hearing before a Board appointed Administrative Law Judge, Employer did not appear. On February 14, 2002, a Notice of Intent to Dismiss Appeals was sent to Employer by certified mail. The green certified mail return card was signed by Ziad Boukai and returned to the Board on March 11, 2002. The Notice of Intent to Dismiss Appeals notified Employer that the Board intended to dismiss the appeals unless Employer submitted, within 10 days after receipt of the notice, a written statement containing sufficient facts to establish that the failure to appear at the hearing was reasonable and for good cause.

Employer did not submit a statement or otherwise respond to the Notice of Intent to Dismiss Appeals. On May 29, 2002, the Board issued an Order Dismissing Appeals. Over twelve months later, on June 13, 2003, Employer filed a petition for reconsideration indicating that the "meeting" (hearing) was to be rescheduled at Employer's request due to prior engagements at the time and that Employer was supposed to receive notification by mail of a new hearing date.³ Additionally, Employer asserted that the penalties are tremendous and unjust under the circumstances.

REASONS FOR DENIAL OF PETITION FOR RECONSIDERATION

Labor Code section 6614(a) sets forth the deadline for filing a petition for reconsideration from an ALJ decision or an order of the Board:

At any time within 30 days after the service of any final order or decision made and filed by the appeals board or a hearing officer, any [aggrieved] party . . . may petition the appeals board for reconsideration Such petition shall be made only within the time and in the manner specified in this chapter.

³ Our review of the Board's file contains no information regarding a request for a continuance of the hearing date from any party. Requests for continuances of hearing dates must be in writing and directed to the Board in accordance with section 371.1.

A regulation of the Board provides that “[t]he petition for reconsideration shall be filed at the Appeals Board in Sacramento, California, and shall be deemed filed on the date it is delivered or mailed to the Appeals Board.” (8 Cal. Code Regs. § 390(a).)

In the present case, the order dismissing the appeals was served by mail on the parties on May 29, 2002. Because the order was served by mail, the time for filing a petition for reconsideration was extended by 5 days. (See 8 Cal. Code Regs. § 348(c).) Thus, the last day to file a petition for reconsideration challenging the decision was July 4, 2002 which was 35 days after service of the order. The petition for reconsideration filed by Employer *over twelve months later* on June 13, 2003, was well past the statutory deadline.

Longstanding Board precedent establishes that the Board does not have jurisdiction to accept the petition. The Board has consistently held that the requirement that a petition for reconsideration be mailed or delivered to the Appeals Board within 30 days of the issuance of the decision (or order) to be reconsidered is jurisdictional and the Board is without power to enlarge the time for the filing of a petition for reconsideration. (*Unocal Corporation* Cal/OSHA App. 92-639 Denial of Petition for Reconsideration (May 13, 1993) citing *Dalton Construction Company*, Cal/OSHA App. 83-987, Denial of Petition for Reconsideration (Feb. 7, 1985).) The deadline for filing a petition for reconsideration is jurisdictional and even a petition filed one day beyond the deadline must be denied. (See *Beutler Heating & Air Conditioning, Inc.* Cal/OSHA App. 93-2220 Denial of Petition for Reconsideration (March 16, 1995) and *Edwin D. Chapman* Cal/OSHA App. 81-331 Denial of Petition for Reconsideration (Oct. 1, 1981).)

The courts and other adjudicatory agencies have reached the same conclusion when interpreting similar statutory filing deadlines. It is well established that if a time limitation for filing a document with an agency is jurisdictional, and a document is filed beyond the time limit, neither the agency nor a court may grant relief since they lack jurisdiction over the matter. (See *Humbert v. Castro Valley County Fire Protection Dist.* (1963) 214 Cal.App.2d 1, 9.)

The Board finds that Employer did not file its petition for reconsideration within the statutorily prescribed time. Therefore, the Board is without jurisdiction to review the order issued May 29, 2002. Accordingly, the order dismissing the appeals is final and not subject to review by any court or agency.⁴

⁴ Section 390.3(a) states: “If within 30 days of the filing of an order or decision no petition for reconsideration has been filed, and no reconsideration has been ordered on the Appeals Board’s own

DECISION

Based upon the above, the petition for reconsideration is denied as untimely. The Board has no jurisdiction to re-open the now final Order Dismissing Appeal.

MARCY V. SAUNDERS, Member
GERALD PAYTON O'HARA, Member

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motion, the order or decision is *a final order* of the Appeals Board and not subject to review by any court or agency." (Italics added.)